

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SWARTZ,

Plaintiff(s),

v.

PRESIDIO ADVISORY SERVICES, et al.,

Defendant(s).

NO. C03-1252MJP

MINUTE ORDER

The following minute order is made by the direction of the court, the Honorable Marsha J. Pechman:

The Court has received and reviewed Plaintiff's Motion for Reconsideration and Relief from Order (Dkt. No. 332). In large part, the Court is inclined to deny the motion. However, there is one issue concerning individual defendant David A. Makov upon which the Court is calling for a response from defense counsel.

Plaintiff correctly points out that the Indictments from September and October of 2005 are referenced in the Third Amended Complaint ("TAC;" ¶ 11). The Court directs Defendant Makov to respond to the following questions:

1. On the basis that the indictments are referenced in the TAC, are they entitled to be considered as part of Plaintiff's pleadings when ruling on a motion to dismiss pursuant to FRCP 12(b)(6)?

MINUTE ORDER

- 1 2. In a motion to dismiss under F.R.C.P. 12(b), all well-pleaded allegations of material
2 fact in the complaint are taken as true and construed in the light most favorable to the
3 nonmoving party. Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001).
4 Does this rule extend to documents referenced in the complaint; i.e., must the Court
5 accept as true all the allegations of the September and October 2005 indictments for
6 purposes of ruling on a 12(b)(6) motion to dismiss?
- 7 3. If so, do the allegations contained in the October 2005 Superseding Indictment at ¶
8 78y and ¶ 78aa constitute a set of facts sufficient to state a claim, at the very least, for
9 conspiracy to commit fraud and should Defendant Makov's dismissal be reconsidered
10 on that ground?

11 Defendant Makov is ordered to respond on these points. The responsive briefing is not to
12 exceed 12 pages, and shall be filed no later than **June 27, 2008**.

13
14 Filed this 19th day of June, 2008.

15 BRUCE RIFKIN, Clerk

16 By /s Mary Duett
17 Deputy Clerk